BANKRUPTCY REFORM/Penalizing Lawyers for Abusive Filings

SUBJECT: **Consumer Bankruptcy Reform Act . . . S. 1301. Grassley motion to table the Feingold/Specter amendment No. 3602 to the Grassley/Hatch substitute amendment No. 3559 to the committee substitute.**

ACTION: MOTION TO TABLE AGREED TO, 57-42

SYNOPSIS:

(See other side)

YEAS (57)

Republicans (53 or 96%)		Democrats (4 or 9%)
Abraham	Helms	Breaux
Allard	Hutchinson	Bryan
Ashcroft	Hutchison	Byrd
Bennett	Inhofe	Reid
Bond	Jeffords	
Brownback	Kempthorne	
Burns	Kyl	
Campbell	Lott	
Chafee	Lugar	
Coats	Mack	
Cochran	McCain	
Collins	McConnell	
Coverdell	Murkowski	
Craig	Nickles	
D'Amato	Roberts	
DeWine	Roth	
Domenici	Santorum	
Enzi	Sessions	
Faircloth	Smith, Bob	
Frist	Smith, Gordon	
Gorton	Snowe	
Gramm	Stevens	
Grams	Thomas	
Grassley	Thompson	
Gregg	Thurmond	
Hagel	Warner	
Hatch		

NAYS (42)

Republicans (2 or 4%)	Democrats (40 or 91%)	
Shelby	Akaka	Kennedy
Specter	Baucus	Kerrey
	Biden	Kerry
	Bingaman	Kohl
	Boxer	Landrieu
	Bumpers	Lautenberg
	Cleland	Leahy
	Conrad	Levin
	Daschle	Lieberman
	Dodd	Mikulski
	Dorgan	Moseley-Braun
	Durbin	Moynihan
	Feingold	Murray
	Feinstein	Reed
	Ford	Robb
	Graham	Rockefeller
	Harkin	Sarbanes
	Hollings	Torricelli
	Inouye	Wellstone
	Johnson	Wyden

NOT VOTING (1)

Republicans (0)	Democrats (1)
	Glenn-[2]

EXPLANATION OF ABSENCE:
1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

This amendment should be called the "Bankruptcy Mills Protection Act." A "bankruptcy mill" is a new, disreputable type of business that has emerged since lawyers were first allowed to advertise. Such mills quickly shove people through Chapter 7 bankruptcy filings without any concern over whether the people involved have any need for filing or whether it is the best financial option for those people. We know of one such lawyer who runs about 1,000 people per year at $1,000 per person through Chapter 7 bankruptcy. Creditors lose huge sums and people who could have restructured or otherwise worked their way out of debt have their credit ruined and lose their assets, but that lawyer is making a bundle. In an effort to stop this unethical abuse of the bankruptcy laws, this bill will make it possible for judges to order attorneys to pay the costs of holding hearings in those cases that they have made substantially unjustified filings. It is true that under current law they can be made to pay when they make frivolous filings, but the practical reality is that the "frivolous" standing is so high that no one is ever found to violate it. That high standard has not stopped a nearly 800 percent increase in the last 20 years in the number of bankruptcies in America. Under this bill's new standard, a judge will have discretion. If he sees the same lawyer, in case after case, filing Chapter 7 bankruptcies for people who have financial means and should be in Chapter 13 or not in bankruptcy proceedings at all, he will be able to make that lawyer pick up the bill for the hearings. No other charges or fines will be assessed.

Some of our colleagues, though, are upset that we have suggested allowing this very modest cost to be assessed on lawyers who make substantially unjustified bankruptcy filings. Even though such filings are not in the interests of anyone but the lawyers who make them, our colleagues think that it would be better to make the lawyers' clients pay. They have therefore offered the Feingold amendment to make the lawyers' clients instead of the lawyers themselves pay court costs that come from abusive Chapter 7 filings. We emphatically disagree with our colleagues. Those sleazy lawyers who run bankruptcy mills are not concerned about their clients' costs; the only way to discourage them from abusing Chapter 7 is to punish them directly. We therefore urge our colleagues to reject the Feingold amendment.

Those opposing the motion to table contended:

This bill, as drafted, will pressure lawyers to act in their own interests instead of in their clients' interests. Under current law, lawyers can be punished for making frivolous claims, including frivolous claims in bankruptcy proceedings. However, they cannot and should not be punished for pursuing long-shot claims. Before we were Senators many of us had private law practices. When we sat down with our clients, we typically came up with two or three basic defenses to pursue. Often, the third choice would be a fairly weak legal argument unless the facts in support of it were very strong. Still, we would pursue that argument on the outside chance that the judge would believe that the facts were strong enough to support it. As we see matters, we were doing our jobs by making as vigorous a defense as we could. Under this bill, though, a judge will be able to say that a lawyer vigorously advocating for his client by pursuing a long-shot argument is substantially unjustified for doing so, and will then be able to levy a fine. In such a situation, we believe many lawyers may be tempted to put their own interest in avoiding a fine ahead of their clients' interests. Even if they believe that their clients will be better served filing for Chapter 7 bankruptcies, they may steer them elsewhere in order to avoid fines. Many lawyers will likely refuse to help in such filings at all, which will force people who need to go into such proceedings to go into them without any legal representation. When they do, creditors will have a much easier time manipulating them. To avoid these problems, the Feingold amendment would instead allow the judge to assess the debtors when they make substantially unjust filings. This action will retain the incentive for trustees to challenge those filings, but it will not have the effect of depriving creditors of fair legal representation. We urge our colleagues to support this reasonable proposal.